

# In the Court of Appeals of the State of Alaska

**Richard Dorsey,**

Appellant,

v.

**State of Alaska,**

Appellee.

Court of Appeals No. **A-13521**

## **Order**

Motion to Accept Late Appeal

Date of Order: **11/15/2019**

Trial Court Case No. **3AN-17-05530CI, 3AN-09-12682CR**

Attorney Megan M. Rowe of the Denali Law Group (under contract with the Office of Public Advocacy) filed a motion on September 25, 2019, asking this Court to accept Richard Dorsey's late-filed appeal. This appeal, however, was due on May 13, 2019.

(Because the judgment was distributed by mail on April 9, 2019, three days are added to the time period for filing an appeal of that judgment. *See* Appellate Rule 502(c). Consequently, Mr. Dorsey's appeal was due 33 days after the distribution of the judgment — on or before May 12, 2019. But because that date fell on a Sunday, Mr. Dorsey's time for filing his appeal actually expired on Monday, May 13.)

This Court has no authority to accept an appeal that is filed more than 60 days late. *See* Appellate Rule 521. This means that this Court lost its authority to accept Mr. Dorsey's appeal on Friday, July 12, 2019. Mr. Dorsey's appeal was not filed until September 25, 2019 — 75 days after the due date.

That said, this Court has on rare occasions accepted appeals filed more than 60 days late when the pleadings accompanying those appeals had set forth a *prima facie* case of ineffective assistance of counsel under *Roe v. Flores-Ortega*, 528 U.S. 470, 477 (2000), and that the appellants were therefore entitled to the relief they sought — that is, the attorney’s improper neglect of the appeal is obvious and uncontested. See, e.g., *Gusty v State*, File No. A-08832, *Stacy v. State*, File No. A-12668, *Hoehne v. State*, File No. A-12815, *Backford v. State*, File No. A-12995, and *Nyako v. State*, File No. A-13157; see also *Amos v. State*, 46 P.3d 1044 (Alaska 2002). However, the affidavit accompanying Ms. Rowe’s motion to accept late filed appeal does not set forth a *prima facie* case of ineffective assistance of counsel.

Accordingly, **IT IS ORDERED:**

The motion to accept a late-filed appeal is **DENIED**. This denial, however, is without prejudice, and Ms. Rowe (or another attorney from the Office of Public Advocacy) may renew the motion if she believes that she, or the Denali Law Group, improperly neglected Mr. Dorsey’s desire to appeal the dismissal of his application for post-conviction relief. If Ms. Rowe, or another attorney from the Office of Public Advocacy, does not file a renewed motion to accept this late-filed appeal (or an appropriate motion for an extension of time to file an affidavit) on or before **Monday, December 2, 2019**, the Clerk’s Office shall close this case.

Although this case may be closed because this Court has no authority to accept the appeal, Mr. Dorsey — through appointment of a conflict attorney by the Office of Public Advocacy — may file a new application for post-conviction relief to litigate whether Mr. Dorsey lost his right to appeal because of the ineffective assistance of counsel.

Additionally, Ms. Rowe has filed a request that she and the Denali Law Group be allowed to withdraw from this case. The Court will hold that request in abeyance until either Ms. Rowe or the Office of Public Advocacy files a renewed motion to accept the late-filed appeal (with an affidavit setting out a *prima facie* case of attorney neglect), or until December 2, 2019, whichever occurs first.

Entered at the direction of Chief Judge Allard.

Clerk of the Appellate Courts

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Sarah Anderson, Deputy Clerk

**Distribution:**

Mail:  
Rowe, Megan M.  
de Lucia, Tamara Eve